Indiana Right To Work Act Upheld By Indiana Supreme Court

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Judges Gavel

The Indiana Supreme Court decided that I.C. sections 22-6-6-8 and 22-6-6-10 in the Indiana Right to Work Law do not violate Article 1, Section 21 of the Indiana Constitution. In so ruling, the Court overturned the trial court's decision which had concluded that those sections of the Act were facially unconstitutional. Section 21 of the Indiana Bill of Rights, Article 1 of the Indiana Constitution, provides that "[n]o person's particular services shall be demanded, without just compensation." So for the Union to prevail on its Section 21 claim, it must demonstrate: (1) that it performs "particular services," (2) "on the State's demand," and (3) is entitled to "just compensation." In an opinion written by Justice Dickson, the Court concluded that on its face, Indiana Right to Work Law does not contain "a state demand for services; the law merely prohibits employers from requiring union membership or the payment of monies as a condition of employment." The

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unions had argued to the Court that the statute contains an indirect demand for services because unions are obligated under federal law to represent all members of the bargaining unit whether or not they are members of the Union. The Court responded to that argument by saying "The Union's federal obligation to represent all employees in a bargaining unit is optional; it occurs only when the union elects to be the exclusive bargaining agent, for which it is justly compensated by the right to bargain exclusively with the employer." Justice Rucker, who concurred in the result, wrote separately to highlight the fact that the Court's decision came to the court on the trial court's denial of the State's motion to dismiss the union's challenge to the statute. When the trial court denied the State's Motion to Dismiss, it also *sua sponte* entered an order declaring these two sections of the Act unconstitutional under Section 21. Justice Rucker's concurrence attempts to keep the door cracked open for a subsequent challenge that the statute is unconstitutional "as applied". He writes in his concurrence that "[u]nlike the heavy burden placed on a party seeking to challenge a statute on its face, an "as-applied" constitutional challenge asks "only that the reviewing court declare the challenged statute or regulation unconstitutional on the facts of the particular case. . . . And here the Union has not attempted to demonstrate that under the particular circumstances presented in this case it has been deprived of compensation by operation of the Right to Work Law." Justice Rucker's conclusion suggests that there is more to come on this issue noting that here the Union has not had the opportunity to "demonstrate that the Right to Work Law operates in such a way as to have actually eliminated or reduced its compensation from dues or "fair share" payments. Nor has the Union shown that upon expiration of a valid union security agreement, it was unable to operate in a manner that would allow the Union to charge all of its members for the services the Union provided them. In essence there may very well exist a set of facts and circumstances that if properly presented and proven could demonstrate that a union has actually been deprived of compensation for particular services by application of the Right to Work Law. And thus as to that union the statute would be unconstitutional as applied. However, this is not that case." Chief Justice Rush and Justices David and Massa joined in Justice Dickson's majority opinion. A copy of the Court's opinion is attached here.